



SINGLE BENCH.

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CG)

WRIT PETITION NO. 1452 OF 2005

BETWEEN

Santosh Das aged 38 years, S/o Ram Vilash, by caste Suryavanshi (Hindu) occupation cultivation, resident of Village Kachanda, Tahsil Nawagarh (Janjgir) District Janjgir Champa (CG).

PETITIONER
PLAINTIFF

A N D

1. Sheetla aged 35 years.
2. Kaushal aged 27 years .
3. Punni Lal, aged 25 years .
4. Rakesh ,aged 21 years.

All Daughter/sons of Late Amrit Lal.

5. Rahi Bai ,aged about 60 years, Wd/o Late Amrit Lal .
All by caste Kurmi ,resident of Mojja Kachanda, Tahsil Nawagarh (Janjgir) District Janjgir Champa (CG).

6. The State of Chhattisgarh, through Collector Janjgir Champa ,Headquarter Janjgir (CG).

1451/05
P.R. No.
Presented by Shri.
dated 05-04-05

RESPONDENTS
DEFENDANTS

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION
OF INDIA

COPY
04/04/05
C. BILASPUR

आदेश पत्रक

मामला क्रमांक W.P.No. 1452 सन् 2005

..... विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	13.04.2005: - Shri Awadh Tripathi, learned counsel for the petitioner. Shri Parag Kotecha, learned P.L. for the State/respondent. The petitioner has filed the instant petition under Article 227 of the Constitution of India as his application for amendment preferred under Order 6 Rule 17 of the C.P.C. in Civil Suit No. 61-A/2004 before the first Civil Judge, Class-II, Janjgir (C.G.) has been rejected vide order dated 22.01.2005. The petitioner moved an application under Order 6 Rule 17 of the C.P.C. for amendment in his plaint as he wanted to incorporate "sale deed" in place of "agreement to sell" and this application has been rejected by the Court below by recording a finding that if the application is allowed, the nature of the suit will be changed, therefore, such amendment is not permissible. Learned counsel for the petitioner submits that a suit for declaration of title and specific performance was filed by him on the averment that the land in question was transferred by the defendants to the petitioner vide deed dated 06.04.1990. However, no registered sale deed was executed by the defendants though the possession of the land was delivered to the petitioner at the time of execution of the above deed. Earlier in the plaint, the plaintiff/petitioner has described this document as agreement to sell. However, a bare perusal of the document reveals that it is a sale deed and therefore, the learned Civil Judge ought to have allowed the application for	

(पीछे देखिये)

आदेश पत्रक

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मामला क्रमांक W.P. 1452 सन् 2006

विरुद्ध

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	amendment and the finding of the Tribunal is erroneous that the nature of the suit will be changed if the application for amendment is allowed. I have heard learned counsel for the petitioner and I have gone through the pleadings of the respective parties and the documents in question. However, from perusal of the impugned order by which the application for amendment has been rejected, it cannot be termed that the same has been passed by the learned Civil Judge without jurisdiction or in excess of the jurisdiction vested in it. It can also not be held that by the impugned order the petitioner has been subjected to grave injustice which requires interference under the supervisory jurisdiction under Article 227 of the Constitution by the High Court. In view of the above, the petition is without any merits and the same is liable to be dismissed at the motion stage itself and it is accordingly dismissed because the nature of the document shall be adjudged during the trial	

Sd/-
Dhirendra Mishra
Judge

(पीछे देखिये)

40.4.06